

Appl. No. : 09/673,987
Filed : January 8, 2001

Response to Examiner Comments

The Examiner noted that an abstract of the disclosure was not provided on a separate sheet with the application as filed. In accordance with 37 C.F.R. § 1.72(b) Applicants have provided herewith an abstract of the disclosure on a separate sheet.

Claim Objection

The Examiner advised that should Claim 14 be found allowable, Claim 15 would be objected to under 37 C.F.R. § 1.75 as being a substantial duplicate thereof. Thus, Applicants have cancelled Claim 15.

Rejection Under 35 U.S.C. § 112, Second Paragraph

Claims 17 and 21 were rejected under 35 U.S.C. § 112, second paragraph, as being indefinite. The Examiner asserts that Claims 17 and 21 recite the broad recitation "pesticide" and also recite a narrower statement of the range/limitation, "fungicide". The Examiner cites Ex parte Wu in which the Board of Patent Appeals stated that broad language followed by "such as" and then narrow language is indefinite because it is unclear whether this language is merely exemplary of the remainder of the claim or a required feature of the claim. However, Applicants are unclear as to the application of this case to the presently claimed invention. Claim 17 recites a proper Markush group which includes, *inter alia*, pesticides and compatible fungicidal agents, however the two terms are not limiting on each other. Claim 21 recites the alternative phrase "pesticide or fungicide" and in this claim the two terms do not limit the other. Thus it is unclear how these claims are indefinite, as they appear to properly set forth the presently claimed invention. Applicants respectfully request withdrawal of the rejection of Claims 17 and 21 on this basis.

Rejection Under 35 U.S.C. § 102

Claims 1 and 2 are rejected under 35 U.S.C. § 102(a), 102(b), and 102(e) as being anticipated by Comparative Example 1b of Barranx et al. (US 5,763,468). Barranx discloses a composition containing 20% pine oil, 20% tall oil sodium fatty acid soap, 10% isopropanol, and 50% water. However, the composition of the presently claimed invention comprises, *inter alia*, a

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monoterpene alcohol portion comprising pine oil with alcohol content of at least 60% by weight. The composition of Barranx has a lower relative alcohol content than that of the presently claimed invention, as the percentage of alcohol relative to pine oil is smaller, 10% alcohol and 20% pine oil, whereas alcohol content relative to pine oil in the presently claimed composition is at least 60% of the monoterpene alcohol portion. In addition, Barranx does not disclose an agricultural composition comprising sufficient fatty acid soap and/or sufficient foam enhancing agent to allow the composition to be applied as, or to produce, a foam having at least a surface monolayer of bubbles during use. Therefore, the presently claimed invention is not anticipated by Barranx. Accordingly, Applicants respectfully request withdrawal of the rejection on these bases.

Rejection Under 35 U.S.C. § 103

Claims 1, 2, 4, 6-9, 11, 12, 14-17, 19, 21-25, 28-29, and 47-49 were rejected under 35 U.S.C. § 103(a) as being unpatentable over the combined teachings of Barranx and Richter (US 5,728,672). The Examiner asserts that one of skill would be motivated to combine the teachings of Barranx and Richter because they disclose the utility of combining terpene or pine oil components with soap materials in disinfectants. The presently claimed invention is directed towards agricultural compositions for use as herbicides, pesticides, and other agricultural treatments. Richter is drawn to a pine oil cleaning solution for disinfecting and cleaning surfaces. Applicants assert that one of skill in the art would not have been motivated to combine Richter and Barranx, as the field of disinfectants is removed from that of herbicides, pesticides, and fungicide for use on plants.

Moreover, the combination of Barranx and Richter fail to establish a *prima facie* case of obviousness because neither reference teaches the relative amounts of components recited in the presently claimed composition. Furthermore, neither reference teaches a composition comprising sufficient fatty acid soap and/or sufficient foam enhancing agent to allow the composition to be applied as, or to produce, a foam having at least a surface monolayer of bubbles during use, as recited in present claims. This characteristic of the presently claimed invention prevents volatile components from evaporating off foliage on which the composition has been applied, and it further makes the presently claimed composition more effective in

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retaining or adhering the herbicidal and pesticidal components on the foliage. Thus, even if one skilled in the field of agricultural herbicides would look to the surface disinfection arts to modify the teachings of Barranx, which he would not, the cited combination still fails to disclose explicitly or inherently each and every limitation of the presently claimed invention.

Further, there is no suggestion in either reference which would motivate the skilled practitioner to make the presently claimed composition. Thus, for all of the foregoing reasons, Applicants respectfully request withdrawal of the obviousness rejection over Barranx in view of Richter.

Claims 1, 2, 4, 6-9, 11, 12, 14-17, 19-25, 28-30, 32, 33, 35, 38-40, 42, 43, and 47-49 were rejected under 35 U.S.C. § 103(a) as being unpatentable over the combined teachings of Pullen et al. (US 5,753,593) and Evans et al. (US 5,948,731). Pullen teaches a herbicide for use on surface aquatic foliage which includes at least one surfactant and at least one high terpene from natural oil. However, Pullen does not teach a monoterpenes alcohol portion comprising pine oil with alcohol content of at least 60% by weight as recited in the presently claimed invention. Further, Pullen fails to disclose a formulation to be applied as, or to produce, a foam having at least a surface monolayer of bubbles during use. Evans does not provide the missing teachings. Instead, Evans teaches an herbicide with fatty acid salts for vegetative control. There is no teaching in Evans as to a monoterpenes alcohol portion comprising pine oil with alcohol content of at least 60% by weight. Likewise, Evans fails to disclose or suggest a composition comprising sufficient fatty acid soap and/or sufficient foam enhancing agent to allow the composition to be applied as, or to produce, a foam having at least a surface monolayer of bubbles during use. This foam prevents evaporation of active agents and affixes the active agents to the surface being treated. Furthermore, the composition of the presently claimed invention is not merely effective as a herbicide, but also as a pesticide and fungicide. Accordingly, the cited combination of Pullen and Evans fail to establish a *prima facie* case of obviousness because the references do not teach each and every element of the presently claimed invention. Thus, Applicants assert that the presently claimed invention is non-obvious in view of Pullen and Evans. Applicants respectfully request withdrawal of the rejection on this basis.

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Conclusion

In light of the foregoing remarks, Applicants respectfully request withdrawal of the Examiner's objections and rejections. Should any issues arise which may delay prosecution of the present application the Examiner is respectfully invited to contact the under-signed attorney at the telephone number below.

Please charge any additional fees, including any fees for additional extension of time, or credit overpayment to Deposit Account No. 11-1410.

Respectfully submitted,

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